FILTERING THE SEDIMENT
OUT OF THE NEW STORMWATER REGULATIONS

THE NITTY-GRITTY DETAILS: SITE DEVELOPMENT
LONG-TERM OPERATIONS & MAINTENANCE ISSUES,
PERMIT FEES, STORMWATER UTILITIES

John Byrum
Troutman Sanders LLP

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SITE DEVELOPMENT LONG TERM OPERATIONS & MAINTENANCE ISSUES

I. SUMMARY

The new Virginia Stormwater Management Program regulations (VSMP Regulations) require thorough inspection of development sites for compliance with the requirements of the Virginia Stormwater Management Act (VSMA), the Virginia Stormwater Management Program General Permit for Discharges of Storm Water from Construction Activity (VSMP General Permit DCR01) and individual VSMP permits. They impose substantial obligations on both developers and localities for the inspection of permanent stormwater management facilities following completion of construction and assign continuing responsibility for the maintenance of facilities post-development. The Regulations provide tools with which localities can enforce VSMP Regulations and permit requirements under a qualifying local program.

II. VIRGINIA STORMWATER MANAGEMENT PROGRAM CONSTRUCTION GENERAL PERMIT

A. Current Amendments.

1. The Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Storm Water from Construction Activity (DCR01) is undergoing amendment. Public comment on proposed amendments to VSMP General Permit amendments closed December 26, 2008.

2. Amendments will NOT incorporate new technical criteria and other provisions of amendments to Parts I (Definitions), II (Technical Criteria for Storm Water Discharges), III (Local Programs) and XIII (Fees) of 4 VAC 50-60-10, et seq. (VSMP Regulations). New technical criteria not expected to be incorporated into VSMP General Permit until late 2010/early 2011.

3. Purpose of amendments is to “increase clarity, improve permit administration and efficiency and mirror Environmental Protection Agency changes to EPA construction permit.” See Update on Stormwater Management Regulations in Virginia, Va. Dept. of Conservation and Recreation, November 22, 2008 [Copy attached at Attachment 1].

B. Expiration of Current Permit/Reapplication.

2. Because General Permit and all individual permits written thereunder expires, everyone holding an active construction permit will have to either (a) reapply for coverage or (b) submit a notice of termination by June 30, 2009.

3. DCR will provide notification to active permit holders on how to reapply for coverage. *Id.*

III. SITE DEVELOPMENT LONG-TERM OPERATIONS AND MAINTENANCE

A. Stormwater Management Plans. Qualifying local programs must require stormwater management plans for all land-disturbing activity greater than 1 acre (2500 sq. ft. in Chesapeake Bay Preservation Act jurisdictions).

1. Localities may develop comprehensive stormwater management plan applicable to all development within the locality. Comprehensive plans can meet water quality or water quantity requirements or both. Comprehensive plans must ensure that offsite reductions that would be required for each contributing land-disturbing site are achieved within the watershed unit (HUC).

2. A management plan must govern development on project-wide basis 4 VAC 50-60-93:

   a) Plan must apply stormwater management technical criteria to entire land-disturbing activity;
   
   b) Individual lots/phases of development aggregated for planning purposes — entire development considered single land-disturbing activity;
   
   c) Plan must consider all sources of surface runoff, all subsurface/groundwater flows converted to surface runoff.

B. Stormwater Management Plan Specific Requirements 4 VAC 50-60-108.

   Plans must include, *inter-alia*:

   1. Information identifying owner and developer of site and tax reference/parcel numbers of all affected properties;

   2. The location of all points of stormwater discharge, receiving surface waters, karst features (sink holes, sinking and losing streams, caves,
3. The Location and design of proposed stormwater management facilities;

4. A narrative description of proposed stormwater management facilities and means by which facilities will be operated and maintained during, after construction;

5. Information about the hydrologic characteristics and structural properties of soils used in installing stormwater management facilities;

6. Comprehensive hydrologic and hydraulic computations of pre- and post-development runoff conditions for required design storms (2- and 10-year, 24 hour storms baseline, 100-year storm event for impoundment structures unless otherwise specified by Impounding Structure Regulations 4 VAC 50-20);

7. Good engineering practices and calculations verifying compliance with water quality/quantity requirements;

8. A Site map depicting contributing drainage areas, receiving waters or karst features, existing streams/ponds/culverts/ditches/wetlands, soil types, vegetative cover, existing development, limits of proposed clearing and grading, information sufficient to determine impact of stormwater runoff on adjoining parcels;

9. The Project’s proposed land use with tabulation of percentage surface area adapted to various uses;

10. A Completed registration statement, required fees and such other information deemed necessary by locality.

C. Linear Development Projects Included.

1. The new regulations include linear development projects previously excluded from VSMP requirements. Land disturbance for: (i) construction of electric, telephone and utility lines or natural gas pipelines; (ii) construction of railroad tracks, rights-of-way, bridges, communication facilities, related structures; (iii) highway construction projects; (iv) stormwater channel construction and stream restoration activity is now subject to permit requirements.
2. Private subdivision roads are excluded from definition of “linear development project.”

3. Linear development projects are excepted from requirements if:
   
a) Less than one acre disturbance/2,500 sq. ft. in CBPA area; or
b) Part of “larger common plan of development” disturbing more than one acre.

   However, a locality may reduce exception to smaller area or qualify conditions under which exception applies.

D. Access for Inspections, Maintenance 4 VAC 50-60-108.B.1(i)-(j). A Plan must include proof of access for inspection of stormwater management facilities. It must provide for maintenance of stormwater facilities during and after construction. Access/maintenance requirements include:

1. Proposed right-of-entry agreements or easements from the property owner for purposes of inspection and maintenance; and

2. Proposed maintenance agreements between the locality and owner setting inspection schedules, assigning fiscal responsibility for facility maintenance.

3. A maintenance agreement may provide the locality a “self-help” option. A locality may require that agreements contain provision that:

   a) If the owner neglects maintenance or repair of stormwater facility; or
   b) If the facility becomes a public health or safety concern; and
   c) If the owner has failed to perform necessary maintenance and repairs after receiving notice from the locality;
   d) The locality may perform necessary maintenance/repairs and recover costs from the owner (the notice requirement is waivable in case of health/safety concerns).

E. Inspection During Construction 4 VAC 50-60-114.A. The regulations set requirements for site inspection during and after completion of land-disturbing activity.

1. During construction, inspections of land-disturbing activities shall be conducted by a qualifying local program or its designee to ensure that
activity complies with VSMP General Permit for Discharges of Storm Water from Construction Activities.

2. Criteria for inspection are unspecified by the regulation; however, DCR provides two inspection report forms:

   a) Short Report — Broad verification of compliance with VSMP General Permit VSMP Construction Permit Inspection Report [Attachment 2A].

      • Verify submission of completed registration statement, issuance of coverage letter, permit, inspection by Qualified “Personnel . . . at required frequency;”
      • Verify availability of Storm Water Pollution Prevention Plan (SWPPP), Erosion and Sediment Control (ESC) Plan and detailed site map;
      • Verify generally that “[the] SWPPP contain(s) all required items;”
      • Verify the implementation/effectiveness of site stabilization and structural practices;
      • Record major grading activities;
      • Ensure that the discharge from storm water facilities or conveyance systems is to an adequate channel, sediment escapes are periodically removed to minimize offsite impacts;
      • Ensure maintenance of controls, road cleaning, containment of litter, debris and chemicals;
      • Certify no “significant” impacts to receiving waters;

   b) Detailed Report — Thorough verification of compliance with specific VSMP General Permit requirements by category of requirement VSMP Construction Permit Inspection Report (Detailed Report) [Attachment 2B].

      • Inspection broken out by category of requirement: SWPPP Content; Pollutant Reduction Controls; Erosion and
Sediment Controls; Other Controls; Maintenance of Controls; Inspection; Nonstormwater Discharge Management.

- Records details of SWPPP, including sequence & timing of land-disturbing activities, estimate of total land-disturbance area (including off-site areas), potential pollution sources, nearest receiving waters, etc;

- Verifies site map details, including direction of final storm flows and slopes, disturbed and undisturbed areas, location of surface waters (including wetlands), location of stormwater controls, stormwater discharges and off-site areas;

- Describes pollutant reduction controls, identifies operator responsible for implementation;

- Records details of ESC measures, including dates of grading, date(s) of temporary/permanent cessation of grading, initiation of stabilization practices, installation of sediment basins and traps, compliance with management practices;

- Verifies calculations supporting all post-construction stormwater management measures, verifies that measures are designed/installed according to local/state requirements;

- Ensures procedures and schedules for maintenance of all controls in effective operational condition — if controls are insufficient, existing BMPs must be modified or additional BMPs installed prior to next storm event;

- Requires inspections conducted every 14 days and within 48 hours after any runoff-producing event;

- Requires inspection of discharge locations to determine effectiveness of ESC measures in preventing significant impact to receiving waters;

- Requires modification of measures within 7 calendar days of inspection.
F. Post-Construction Inspection. 4 VAC 50-60-114.B-D. The new regulations include detailed requirements for the ongoing inspection of permanent stormwater management facilities.

1. The person responsible for development project or designee must submit a sealed, as-built survey for permanent stormwater management facilities certifying construction of facilities in accordance with plan.

2. The operator(s) of a stormwater management facilities must inspect according to a recorded inspection schedule/maintenance agreement (or annually for projects without recorded inspection schedule) and must submit inspection reports to the locality upon request;

3. The locality must inspect stormwater management facilities annually or under an alternative program that ensures facilities are functioning as intended. An alternative inspection program must be:
   a) Established in writing;
   b) Approved by DCR;
   c) Based on a system of priorities taking consideration of purpose and type of facility ownership, recorded inspection schedule/maintenance agreement, contributing drainage area, downstream conditions;
   d) Demonstrated to be an enforceable program meeting the intent of regulations and ensuring inspection at least every five years;
   e) Documented by inspection records;

4. The regulations do not specify the criteria for local program certification of inspector competence; certification authority rests with DCR.
   a) Va. Code § 10.1-561: DCR provides technical assistance to and conducts educational programs on behalf of districts/localities adopting local programs.
   b) Va. Code § 10.1-561.1 Under a qualified program, inspections of land-disturbing activity shall be conducted by certified inspectors; anyone holding a certificate of competence from DCR is deemed to meet certification requirements.
   c) DCR conducts training classes for program administrators, plan reviewers, combined administrators and inspectors. Term of certification is three (3) years; on-line re-certification is available for certified inspectors in their third year of certification.
G. Reporting and Record-Keeping 4 VAC 50-60-126. A locality must keep record and report inspection results to DCR according to specified requirements:

1. A locality must report to DCR on fiscal years basis (July 1-June 30). Reports must include:
   a) Information on each permanent stormwater facility accepted;
   b) The number of VSMP projects inspected and number of inspections by acreage category;
   c) The number and type of enforcement actions;
   d) The number of exceptions.

2. Supporting documents/information shall be available to DCR on request.

3. Records must be kept by the locality for specified durations:
   a) Permit files (5 years after termination);
   b) Stormwater maintenance facility inspection reports (5 years from date of creation);
   c) Stormwater maintenance agreements, design standards and specifications, post-construction surveys and maintenance records (permanently retained);
   d) Other records (as prescribed by regulations of Library of Virginia).

H. Stormwater Management Facility Maintenance 4 VAC 50-60-124. The regulations set requirements for the establishment of permanent responsibility for stormwater management facility maintenance:

1. Responsibility for maintenance remains with property owner unless assumed by a governmental agency;

2. The locality must be party to any maintenance agreement which runs with property to successor(s) in title;

3. In case of lot transfers, corresponding agreements required to ensure performance of maintenance by lot owners or owners’ association is required;

4. Where maintenance is neglected, a locality can exercise self-help to perform repairs and recover costs from the owner. See 4 VAC 50-60-108.B.
IV. ENFORCEMENT

A. Exceptions from Technical Requirements. 4 VAC 50-60-122. Any person can request an exception to the provisions of Part II (Technical Criteria).

1. An exception request, including reasons therefore, must be submitted to the locality in writing.

2. The request may be granted, provided that:
   a) The exception is minimum necessary to afford relief;
   b) Reasonable/appropriate conditions are imposed to preserve the intent of the SWMA and VSMP Regulations;
   c) The exception will not confer a special privilege upon the requestor which has not been accorded to others in similar circumstances;
   d) The exception cannot be based on self-created, self-imposed conditions.

B. Local Enforcement 4 VAC 50-60-116. A locality may adopt procedures to enforce the requirements of the VSMP Regulations.

1. A local enforcement program may include:
   a) Informal and formal administrative enforcement procedures:
      • Verbal warning and inspection reports;
      • Notices of corrective action;
      • Consent special orders
      • Emergency special orders
      • Public notices and public comment periods
   b) Civil and criminal judicial enforcement procedures:
      • Criminal penalties including fines and confinement in jail;
      • Civil penalties within prescribed ranges.

2. Localities must develop policies and procedures outlining steps to be taken in enforcement actions (localities are directed to use DCR’s Stormwater Management Enforcement Manual as guidance).
B. **Penalties** 4 VAC 50-60-116.A.2(a)-(b). A local enforcement program may include penalties within prescribed ranges.

1. **Criminal penalties.**
   
   a) For willful or negligent violation of SWMA, VSMP Regulations, or orders of Board, DCR or locality.
   
   b) Criminal fines of $2,500 to $32,500
   
   c) Confinement in jail of up to twelve (12) months

2. **Civil penalties.** The regulations set forth a maximum penalty of $32,500 per day of violation or occurrence. They include recommended minimum penalties for certain violations:

   a) No Permit Registration — $10,000 per day/occurrence;
   
   b) No SWPPP or incomplete — $10,000 per day/occurrence;
   
   c) No approved ESC plan — $10,000 per day/occurrence;
   
   d) Failure to install stormwater Best management Practices (BMPs) or ESC controls — $5,000 per day/occurrence;
   
   e) Failure to conduct required inspections — $1,000 per day/occurrence.

3. Amounts recovered by the locality shall be used solely to carry out its responsibilities pursuant to Part II and enforcement of the VSMP Regulations.

C. **Hearings** 4 VAC 50-60-118.

1. Any person aggrieved by enforcement action can demand formal hearing by locality (or Board where applicable), provided he files a written petition within 30 days after notice of action.

2. In conducting the hearing, the locality shall:

   a) Prepare a verbatim transcript of hearing;
   
   b) Have authority to issue subpoenas and subpoenas duces tecum compelling attendance of witnesses, production of documents.

D. **Board Enforcement Overlay** 4 VAC 50-60-116.E.

1. Despite authorization of a local program, the Board retains authority to enforce the provisions of VSWMA or VSMP Regulations.
2. Citizen reporting of violations is encouraged by DCR — reporting is directed first to the locality, then to the local DCR office.

3. Localities’ adoption of the recommended civil/criminal penalties is discretionary; however, DCR may take action in the absence of prescribed penalties or failure of the locality to enforce a violation.

4. QUERY: what result where a locality adopts/recovers sub-standard civil penalty amounts?

E. Enforcement Under Other Regulatory Regimes. In certain circumstances violations may be actionable under other statutes and regulations. The Virginia State Water Control Board has treated the failure of stormwater management facilities as actionable under the State Water Control Law (Va. Code §§ 62.1-44.3, et seq. (SWCL)), where the failure causes discharge of pollutants to state waters.


2. “State Waters” include all water within the Commonwealth, whether on the surface or under the ground, including wetlands. See Va. Code § 62.1-44.3.


4. The State Water Control Board’s staff, the Department of Environmental Quality (DEQ) has treated the failed of stormwater retention basin (BMP) as violation of the SWCL.

   a) A Special Order by Consent published in the Virginia Register last year, indicates that a permanent BMP failed resulting in discharge of sediment into 1/3 acre of wetlands, 180 linear ft. of stream channel.

   b) The locality, DCR, DEQ and ACOE responded to the failure.

   c) Evidence indicated that rainfall over the 24-48 hours preceding failure approached/exceeded the required design level of the BMP (100-year storm event).
d) The BMP design had been approved by DCR; maintenance of the BMP was not at issue.

e) Some question was raised (though not resolved) whether impervious soils were used in constructing a dam between the BMP forebay and main basin as required by the approved design; question also was raised whether the collar surrounding an outfall from the BMP likewise contained impervious (rather than native) soils.

f) ACOE determined that it had no jurisdiction under the CWA over the failure/sediment discharge because the deposition of sediment into the wetlands was unintentional.

g) DEQ issued the property owner a notice of violation of Va. Code § 62.1-44.5; § 62.1-44.15:20 (discharge of fill to/quality alteration of wetlands without Virginia Water Protection Permit).

h) The owner declined to challenge jurisdiction, but the action signals a possible enforcement of stormwater management violations by the State Water Control Board/DEQ under the SWCL — could be subject to future challenge.
PERMIT AND MAINTENANCE FEES, STORMWATER UTILITIES

I. SUMMARY

In order to assist localities in administering a local program, the VSMP Regulations revise permitting fees and link increases in fees to the Consumer Price Index. Administrative expenses, particularly long-term stormwater facility maintenance costs, can also be funded via formation of a stormwater utility.

II. PERMIT ISSUANCE, MODIFICATION AND MAINTENANCE FEES

A. Purpose of Fee Schedule Revision/Increase.

1. The VSWMA authorizes establishment of a statewide fee schedule for stormwater management for land-disturbing activities and for municipal separate stormwater sewer systems (MS4).

2. Part XIII of the new VSMP Regulations revises existing fees and sets fees at a level to allow localities to cover costs associated with:

   a) Plan review;
   b) Permit review and issuance;
   c) Inspections;
   d) Enforcement,
   e) Program administration and oversight, etc.

3. Fees also include costs associated with DCR oversight of locally-administered programs and database management.

B. Factors Considered in Setting Fee Schedule. The new VSMP Regulations revise permit fees and tie future increases in fees to the Consumer Price Index (urban areas) (CPI-U) based on a variety of factors:

1. The current fee schedule was transferred with transfer of jurisdiction from DEQ in 2005. Those fees essentially were processing fees, insufficient for operation of a local program and oversight.

2. The VSWMA requires that fees be set at a level sufficient to cover expenses associated with all portions of administration of VSMP permit program.
3. A number of localities requested that DCR set fees at a level that would allow them adequately to administer a local program. Thus, the revised fee schedule seeks to cover costs of key elements of program administration — plan review; permit application review; permit issuance, inspections, enforcement; program administration; travel.

4. The construction fees recognize that administrative expenses routinely increase with the size of a project; thus, construction fees are based on the area being disturbed.

5. Permit maintenance fees (not to be confused with charges to cover the cost of post-construction stormwater facility inspection and maintenance) are established to recoup inspection/enforcement costs for projects not completed and terminated within a year. Modification fees are also established to recover expenses associated with significant plan modifications.

C. Distribution of Fees, Payment, Automatic Increase. The regulations determine the time of payment of the fees and distribution of revenues between DCR and the locality. They also include an automatic increase provision tied to the CPI-U.

5. Payment — 50% of fees are due upon application with the remaining 50% payable upon issuance of coverage.

6. Distribution — Fees are split 72% to the locality and 28% to DCR.

7. Fees may be increased annually based on increases in the CPI-U (not to exceed 4% per annum without formal action by the Board).

8. Fees and attendant provisions may otherwise be periodically assessed and revised via regulatory action.

D. Permit Fees.

5. MS4 New Permit Issuance 4 VAC 50-60-800. Applies to issuance of a new individual VSMP MS4 permit or coverage under a MS4 General Permit. All regulated MS4s that apply for joint coverage under an individual permit or general permit registration shall each pay the full permit fee.

   a) VSMP Municipal Stormwater/MS4 Individual (Large and Medium) — $16,000
   b) VSMP Municipal Stormwater/MS4 Individual (Small) — $8,000
c) VSMP Municipal Stormwater/MS4 General Permit (Small) — $4,000

6. MS4 Major Modifications (Individual) 4 VAC 50-60-810.
   a) VSMP Municipal Stormwater/MS4 Individual (Large and Medium) — $5,000
   b) VSMP Municipal Stormwater/MS4 Individual (Small) — $2,500

7. VSMP Individual Permit or coverage under the VSMP General Permit for Discharges of Stormwater from Construction Activity 4 VAC 50-60-820.
   a) Phase I Land Clearing (“Large Construction Activity,” sites or common plans of development 5 acres or more) — $500
   b) Phase II Land Clearing (“Small Construction Activity,” sites or plans of common development of 1 acre or more and less than 5 acres) — $300
   c) CBPA Area (Small Construction Activity, sites of 2,500 sq. ft. of more and less than 1 acre — $200

8. Modification or transfer of Individual Permits or VSMP General Permit Registration Statements 4 VAC 50-60-825. The Fee schedule sets fees for modification or transfer of Individual Permits or coverage under the VSMP General permit ranging from $20 to $5,000 depending on type of permit and size of land-disturbing activity.

E. Exemptions. No permit application/issuance fee shall be assessed to:

1. Permittees who request minor modifications to permits as defined by 4 VAC 50-60-10 or other minor amendments at the discretion of the locality;

2. Permittees whose permits are modified or amended at the initiative of the permit-issuing authority (this does not include errors in the registration statement identified by the locality or errors in the identification of the acreage of the site);

3. However, permit modifications at the request of the permittee resulting in changes to the stormwater management plan requiring review may be susceptible to a modification fee.
F. Permit Maintenance Fees 4 VAC 50-60-830. The VSMP Regulations also set annual permit maintenance fees for each VSMP permit under which construction continues for more than a year, including expired permits that are administratively continued. These maintenance fees range from $50 for VSMP General Permit coverage on sites less than an acre to $8,800 for a VSMP Municipal Stormwater/MS4 (Large and Medium) permit.

G. Lower Locality Fees Authorized 4 VAC 50-60-700. The VSMP Regulations allow localities to establish lower permit and permit maintenance fees provided they can demonstrate that such lower fees will provide an equivalent amount of funding to DCR and will adequate fund the locality’s administration of its program.

H. Stormwater Utility Maintenance Fees. Staff considered, but declined to include in the Part XIII fee schedule a fee for maintenance of stormwater facilities after completion of construction. As staff recognizes, these expenses can be recovered via use of a stormwater utility.

III. STORMWATER UTILITIES

A. Basics.

1. A stormwater utility (SWU) is a financing option providing a revenue stream for management of a qualified local program.

2. An SWU is funded through user service fees administered separately from the locality’s general tax/revenue fund.

3. A “user,” subject to fees, is the owner of any property that creates stormwater runoff.

4. An SWU funds:
   a) Administration;
   b) Planning —
      • Drainage plans
      • Flood studies
      • Watershed studies;
   c) Implementation of stormwater management measures;
   d) Site/stormwater management facility inspections;
   e) Dam safety.
5. There are currently numerous SWUs operating in Virginia both in the Tidewater area and elsewhere (Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, Virginia Beach, Suffolk, James City County . . . ).

6. Formation requires:
   a) Rate structure selection
   b) Cost of service analysis
   c) Determination of exemptions
   d) Determination of credits
   e) Rate/fee determination


1. Any locality, by ordinance, may adopt a stormwater control program consistent with the VSWMA or any other state or federal regulation, by establishing a utility or enacting a system of service charges.

2. Any two or more localities may enter into cooperative agreements for the establishment and maintenance of a stormwater utility and management of stormwater.

C. Use of Income. Income derived from fees charged by a stormwater utility is considered dedicated special revenue and may be used only to pay or recover costs for:

1. The acquisition, as permitted by statutes authorizing locality acquisition and sale of property (Va. Code § 15.2-1800), of real and personal property, and interest therein, necessary to construct, operate and maintain stormwater control facilities;

2. The cost of administration of such programs;

3. Engineering and design, debt retirement, construction costs for new facilities and enlargement or improvement of existing facilities, including the enlargement or improvement of dams, whether publicly or privately owned, that serve to control stormwater; however, prior to adoption of any ordinance pursuant to this section related to the enlargement or improvement of privately owned dams, a locality shall comply with the notice provisions applicable ordinances generally (Va. Code § 15.2-1427) and hold a public hearing;

4. Facility maintenance, including the maintenance of dams, whether publicly or privately owned, that serve to control the stormwater;
however, prior to adoption of any ordinance pursuant to this section related to the maintenance of privately owned dams, a locality shall comply with notice provisions applicable ordinances generally (Va. Code § 15.2-1427) and hold a public hearing;

5. Monitoring of stormwater control devices;

6. Pollution control and abatement, consistent with state and federal regulations for water pollution control and abatement;

7. Planning, design, land acquisition, construction, operation and maintenance activities.

D. Assessment of Charges. Charges may be assessed to property owners or occupants, including condominium unit owners or tenants (when the tenant is the party to whom the water and sewer service is billed), subject to certain requirements:

1. Charges and shall be based upon assessed party’s contribution(s) to stormwater runoff;

2. Prior to establishing a stormwater utility, a public hearing shall be held after giving notice as required by charter or by publishing a descriptive notice once a week for two successive weeks prior to adoption in a newspaper with a general circulation in the locality. The second publication shall not be sooner than one calendar week after the first publication;

3. A locality adopting a utility shall provide for full waivers of charges to federal, state, or local government agencies when the agency owns and provides for maintenance of storm drainage and stormwater control facilities or is a unit of the locality administering the program.

E. Statutory Waivers. Certain waivers of utility fees are required by statute:

1. A locality shall also provide full waivers of charges for roads and public street rights-of-way that are owned and maintained by state or local agencies. A locality adopting such a system may also provide for full or partial waivers of charges to any person who develops, redevelops or retrofits outfalls, discharges or property so that there is a permanent reduction in post-development stormwater flow and pollutant loading. The locality shall base the amount of the waiver in part on the
percentage reduction in both stormwater flow and pollutant loading, from predevelopment to postdevelopment.

2. No waiver shall be provided, however, to any person who does not obtain an individual VSMP permit or coverage under the VSMP General Permit.

F. Limitation on Income/issuance of bonds.

1. Income derived from service charges may not exceed the actual costs incurred by a locality operating the utility under the provisions of its program.

2. A locality may issue general obligation bonds or revenue bonds in order to finance the cost of infrastructure and equipment for a stormwater control program. Infrastructure and equipment shall include structural and natural stormwater control systems of all types, including, without limitation, retention basins, sewers, conduits, pipelines, pumping and ventilating stations, and other plants, structures, and real and personal property used for support of the system. The procedure for the issuance of any such general obligation bonds or revenue bonds pursuant to this section shall be in conformity with the procedure for issuance of such bonds as set forth in the Public Finance Act (Va. Code § 15.2-2600, et seq.).

G. Late Payment of Charges/Recourse/Billing.

1. In the event charges are not paid when due, interest thereon shall at that time accrue at the rate, not to exceed the maximum amount allowed by law, determined by the locality until such time as the overdue payment and interest are paid.

2. Charges and interest may be recovered by the locality by action at law or suit in equity and shall constitute a lien against the property, ranking on a parity with liens for unpaid taxes.

3. A locality may combine the billings for stormwater charges with billings for water or sewer charges, real property tax assessments, or other billings; in such cases, the locality may establish the order in which payments will be applied to the different charges. However, no locality shall combine its billings with those of another locality or political subdivision (including a stormwater utility), unless such locality or political subdivision has given its consent by duly adopted written resolution or ordinance.
H. Rate Structure. Various rate structures can be selected:

1. Impervious Area Method
   a) Charges owner according to impervious area of property;
   b) Determines impervious portion of property based on its tax assessment class.

2. Equivalent Residential Unit (ERU) Method
   a) Charges according to impervious area of property
   b) Assumes a uniform impervious area for all single-family residential properties.

3. Varied fees by category of residential housing (determined by quartile).

I. Credits. Impervious area can be reduced via application of Low Impervious Development (LID) credits set out in 4 VAC 50-60-63.D (Table 2).

1. Credits applicable to non-residential properties.

2. Provide up to 50% reduction in Percentage of impervious area of property.

3. Credits combined up to maximum % reduction (usually 50%).

4. Credits for green practices, including:
   - Green roofs;
   - Pervious parking;
   - Reforesting, expanding, protecting riparian area;
   - Open space conservation (with or without hydrologic function);
   - Rainwater harvesting.

J. Rate/User Fee Determination under ERU Method.

1. Calculate locality total impervious surface;

2. Apply exemptions/credits;

3. Determine total ERUs (total impervious surface/ base ERU size);
4. Assess total cost of service for the locality — assessment will require:

   a) Inventory of system BMPs/determination of maintenance responsibility;
   b) Inventory of System drainage
      - Already existing in most jurisdictions to meet NPDES requirements
      - Calculable by pilot study
   c) Determination of maintenance costs
      - Preventative maintenance costs
      - Corrective maintenance costs
      - Estimate per BMP and mile of drainage system

5. Determine rate per ERU to meet final costs of service

6. Courts have upheld substantial rate differentials between residential and non-residential properties, provided the locality can support its rates with adequate data. See Twietmeyer v. City of Hampton, 255 Va. 387, 497 S.E. 2d 858 (1998) (fee structure of local stormwater management ordinance, imposing a higher fee on non-residential property at a ratio of five times the fee imposed on residential property, satisfied the requirements of this VSWMA in that fee structure was not facially unreasonable and bore a rational correlation to the amount of stormwater runoff, even though it did not differentiate between properties within each category).

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Helpful resources:


DCR Staff Summary — David Rowling, Policy, Planning and Budget: http://www.dcr.virginia.gov/documents/LRdavidremarks.pdf

DCR Stormwater Management Enforcement Manual (DCR VSWCB-012), February 2006;